DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS: 05-0265
Gross Retail Tax
For 2004

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ISSUE

I. **Like-Kind Exchange** – Gross Retail Tax.

Authority: IC 6-2.5-1-5(a); IC 6-2.5-1-6(a); IC 6-8.1-5-1(b).

Taxpayer challenges the Department of Revenue's decision denying a trade-in allowance – and the consequent assessment of additional gross retail (use) tax – on the purchase of a Cessna aircraft.

STATEMENT OF FACTS

Taxpayer states that it bought a Cessna aircraft from seller February 4, 2004. The cost of the Cessna was $1,800,000. At the time of the purchase, seller permitted a trade-in allowance of $1,000,000 for a Beechcraft aircraft. In addition to the Beechcraft, taxpayer paid seller $800,000 in cash. The seller did not collect sales tax on any portion of the transaction. Taxpayer afterwards paid approximately $48,000 (six percent of $800,000) in use tax.

The Department of Revenue (Department) found that the taxpayer did not own the Beechcraft on February 4, 2005. Therefore, the Department concluded that taxpayer was not entitled to the trade-in allowance and assessed taxpayer for additional use tax ($60,000) based on the claimed $1,000,000 trade-in allowance.

Taxpayer protested the decision arguing that when it "entered into the transaction, it did so with the contemplation that a like kind exchange would take place." Taxpayer pointed out that, "Like kind exchanges are exempt from gross retail tax . . . ."

A hearing was held and a Letter of Findings (LOF) was issued denying taxpayer's protest. The LOF concluded that, "Taxpayer did not own the Beechcraft when it bought the Cessna; taxpayer was not entitled to offer the Beechcraft as a trade-in at the time it bought the Cessna." Taxpayer disagreed, requested a rehearing, the Department granted taxpayer's request, and a rehearing was held. This Supplemental Letter of Findings results.

DISCUSSION

Taxpayer maintains that at the time it bought the Cessna on February 4, 2004, it believed that a like-kind exchange would take place; taxpayer "swapped" its Beechcraft for the Cessna, paid the cash difference, and now maintains that it should not pay use tax on the amount equal to the value ($1,000,000) of the Beechcraft. Taxpayer bases its argument on IC 6-2.5-1-5(a) which states as follows:

> "Gross retail income" means the total gross receipts, of any kind or character, received in a retail transaction, except that part of the gross receipts attributable to: (1) the value of any tangible personal property received in a like kind exchange in the retail transaction[.]

Like-kind exchanges are defined at IC 6-2.5-1-6(a) which states that:

> "Like kind exchange" means the reciprocal exchange of personal property between two (1) persons when:
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> > (1) the property exchanged is of the same kind or character, regardless of grade or quality; and (2) the persons exchanging the property both own the property prior to the exchange.

Taxpayer claims that between 2000 and 2004, the Beechcraft was jointly owed by two predecessor companies. According to taxpayer, the predecessor companies each owned 50 percent of the Beechcraft and that each predecessor company reported on its tax returns half the depreciation, revenues, and expenses related to the Beechcraft's operations. According to taxpayer, the two processor companies "decided to upgrade their Beechcraft to a Cessna and on February 4, 2004 formed a new entity for this purpose . . . ." This "new entity" is the taxpayer. In creating this new entity, the two predecessor companies purportedly made a capital contribution consisting of the Beechcraft and $820,000 in cash.

The "Operating Agreement" for this "new entity" (taxpayer) indicates that it is "Effective February 6, 2004." The Operating Agreement states in Section 3.3 that, "The Members agree the Capital Contributions shall also include the contribution of an aircraft." Thereafter, on February 27, 2004, taxpayer acquired the Cessna for $800,000 in cash and by trading in the Beechcraft. Taxpayer states it "has already paid sales tax in the amount of $48,000 (6 [percent] on the $800,000 cash difference)."

As to the date the actual transaction took place, the documentary information is inconsistent. Taxpayer has provided registration materials indicating that the sales transaction took place on February 27. However, although taxpayer states that it bought the Cessna on February 27, the seller's invoice indicates that the Cessna was sold to taxpayer on February 2. A check written to seller by one of taxpayer's predecessor companies is also dated February 2. The Department's own records of the transaction indicate that the sale of the Cessna took place on May 5, 2004. The "Aircraft History Report," indicates that the Cessna was first registered by taxpayer on May 14, 2005.

In addition, the "Aircraft History Report" indicates that Beechcraft was never owned by both of the two predecessor companies; that report states that the Beechcraft was owned by *one* of the two predecessor companies and that it remained the property of that single company until August 31, 2004, when it was transferred – not to taxpayer – but to a third party not directly involved in the purchase of the Cessna. Taxpayer's own letter – dated November 4, 2004 – specifies that the Beechcraft was wholly owned by *one* of the two predecessor companies.

Further, information provided as to the purported transfer by the two predecessor companies to taxpayer is ambiguous. The parties' February 6, 2004, "Operating Agreement" simply states that "The Members agree the Capital Contributions shall also include the contribution of an aircraft." What aircraft is to be contributed? Who owns the contributed aircraft? Do both of the two predecessor companies have an equal ownership interest in the contributed plane? The apparent fact that both predecessor companies claimed depreciation would seem to indicate that each predecessor company had a 50/50 interest in the Beechcraft; however, there is no title or authoritative documentation indicating that both parties owned an equal share of the Beechcraft. The signatories of the "Operating Agreement" have treated the transfer of the Beechcraft to taxpayer with a casualness inconsistent with the substantial value ($1,000,000) of this asset.

Taxpayer's own November 4 letter summarizes it best. "The fact that the newly acquired aircraft was placed into a new entity [taxpayer] was based upon incomplete and ill thought out advice." Taxpayer admits that, "This was an error of timing, not an intentional action to avoid or diminish the amount of sales tax owed." Nonetheless, taxpayer asks that the Department honor the "spirit of this transaction."

The Department is unable to comply with taxpayer's request. Instead the Department concludes that, pursuant to IC 6-8.1-5-1(b), taxpayer has failed to meet its burden of demonstrating that the "proposed assessment is wrong." Id. The sales transaction is marked by contradictory, conflicting, and incomplete evidence. Taxpayer asks that the Department gloss over these inconsistencies and honor the parties' ambiguous intentions; taxpayer asks that the Department set aside or ignore the obvious discrepancies in the written record of a transaction involving the transfer of an asset worth close to $2,000,000. The Department must decline taxpayer's invitation to honor the "spirit" of the transaction because the Department agrees with taxpayer's own conclusion that the entire transaction was "incomplete and ill thought out . . . ."

FINDING

Taxpayer's protest is respectfully denied.

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